Attorney Docket RSW920010036US1
Serial No. 09/824,298

Remarks

Claims 1-9, 12, 23-31, 33-43, 45-47 stand rejection under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,491,801 to Jain et al. and U.S. Patent No. 6,820,128 to Firoiu et al.; claims 3, 4, 9, 25, 26, 31, 37, 38 and 43 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '801 and '128 patents and U.S. Patent No. 6,646,987 to Qaddoura; claims 10, 32 and 44 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '801 and '128 patents and U.S. Patent No. 4,771,391 to Blasbalg; and claims 13-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,205,120 to Packer et al. in view of the '801 and '128 patents.

A telephone interview was conducted on August 24, 2006 between Examiner Mattis and applicants' representative Robert L. Showalter. During the telephone interview, claim 1 and the prior art applied against claim 1 were discussed. In particular, it was noted that neither U.S. Patent No. 5,491,801 to Jain et al. nor U.S. Patent No. 6,820,128 to Firoiu et al. disclose, teach or suggest at least the limitation "responsive to a packet for a particular TCP connection or UDP association within the plurality of TCP connections or UDP associations causing the traffic for the network path to exceed a level of traffic allowed." Examiner Mattis agreed that claim 1 in its current form defines patentably over the combination of the '801 and '128 patents. Examiner Mattis noted that the finality of the June 19, 2006 Office Action would be withdrawn. The Examiner also stated that he would need to conduct an updated search prior to issuing a further action in the application.

Jain et al. disclose in column 4, lines 52-62:

> a router determines the existence of an overload condition by detecting when it is operating beyond an estimated capacity level, it calculates a fair share of the estimated capacity level for each end system sending packets to the router and then, it identifies which end systems are sending more than a fair share of traffic received by the router. By conditioning a flag in the packets coming from the identified end systems, the router generates feedback indicating that the identified end systems are contributing to the overload condition in the router and that they should decrease their output.

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Nowhere does Jain et al. disclose monitoring the traffic for a plurality of TCP connections or UDP associations through a given network path as required by independent claims 1, 13, 23 and 35 or monitoring traffic for each of a plurality of TCP connections or UDP associations through a given network path, as required by independent claims 7, 18, 29 and 41. Rather, Jain et al. only teach monitoring the traffic passing through a router sent by a plurality of end systems. Nowhere does Jain et al. disclose, teach or suggest monitoring the traffic for a plurality of TCP connections or UDP associations through a given network path or monitoring traffic for each of a plurality of TCP connections or UDP associations through a given network path. Nor do Firoiu et al., Qaddoura or Blasbalg disclose, teach or suggest these aspects of the present invention. It is also noted that Jain et al., Firoiu et al., Qaddoura and Blasbalg fail to disclose, teach or suggest "responsive to a packet for a particular TCP connection or UDP association," as recited in claim 1. Similar limitations are recited in claims 13, 23 and 35. Nor do Jain et al., Firoiu et al., Qaddoura and Blasbalg disclose, teach or suggest the limitation "responsive to the traffic for a selected TCP connection or UDP association," as recited in claim 7. A similar limitation is recited in claims 18, 29 and 41. Accordingly, it is submitted that the Jain et al. patent, the Firoiu et al. patent, the Qaddoura patent and the Blasbalg patent, whether taken singly or in combination, do not disclose, teach or suggest the subject matter set out in claims 1-10, 12 and 23-47.
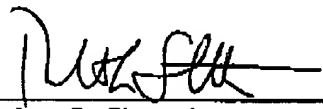
As also noted above, claims 13-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,205,120 to Packer et al. in view of the '801 and '128 patents. The Packer et al. patent lacks a teaching of monitoring the traffic for a plurality of TCP connections or UDP associations through a given network path as required by independent claim 13 or monitoring traffic for each of a plurality of TCP connections or UDP associations through a given network path, as required by independent claim 18. Nor do Jain et al. or Firoiu et al. teach this aspect of the present invention. Accordingly, it is submitted that the Packer et al. patent, the Jain et al. patent and the Firoiu et al. patent, whether taken singly or in combination, do not disclose, teach or suggest the subject matter set out in claims 13-22.

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In view of the above remarks, applicants submit that claims 1-10 and 12-47 define patentably over the prior art. Early notification of allowable subject matter is respectfully requested.

Respectfully submitted,

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